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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

By Hand

William F. Caton  
Acting Secretary  
Common Carrier Bureau  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

NOTICE OF EX PARTE PRESENTATION

Re: In the Matter of the Petition of the Inmate  
Calling Services Providers Task Force for  
Declaratory Ruling; RM 8181

Dear Mr. Caton:

The Inmate Calling Services Providers Task Force ("ICSPTF") wishes to respond to Bell Atlantic's March 14, 1994 letter ("Bell Atlantic letter") opposing ICSPTF's Petition for Declaratory Ruling that inmate calling systems operated by local exchange carriers ("LEC") are customer premises equipment ("CPE") within the meaning of Computer II<sup>1</sup> and its progeny. Bell Atlantic's letter is full of misleading assertions and contradictory statements that ultimately prove why ICSPTF's petition should be granted, not denied.

First, while those ICSPTF members who may also be payphone operators welcome the opportunity to exhaustively review the Tonka<sup>2</sup> decision, as Bell Atlantic suggests, ICSPTF's Petition does not conflict with Tonka, nor does it require that the Commission

<sup>1</sup> Amendment of Section 64.702, 77 FCC 2d 384 (1980), recon., 84 FCC 2d 50, further recon., 88 FCC 2d 512 (1981), aff'd sub nom. Computer & Communications Industry Association v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983) ("Computer II").

<sup>2</sup> Tonka Tools, Inc. and Southern Merchandise Corp. Regarding American Telephone and Telegraph Company Provision of Coinless Pay Telephones, 58 RR2d 903 (1985) ("Tonka").

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address the broader issue of whether the status of LEC payphones as regulated, bundled network equipment is still appropriate. The issue in this proceeding is not, as Bell Atlantic would have it, whether Tonka extends to all instrument implemented payphones. The issue here is whether Tonka extends to private, institutional telephone systems which, because of equipment durability concerns, may include end-user terminals that have the same physical appearance as public payphones, but in fact are functioning as telephone stations behind a separate processor located on the customer's premises, just as the stations behind a private branch exchange ("PBX") function. The underlying policies of the Commission's CPE rules and common logic dictate that these stations are not network equipment within the rationale of Tonka.

As the record in this proceeding makes abundantly clear, inmate calling systems are highly-specialized, private systems, just like a PBX or similar CPE with advanced functionality that operate as private system controls.<sup>3</sup> Other than payphone-shaped terminals, inmate calling systems have little in common with public payphone systems. For example, unlike public payphones, a large number of inmate calling systems require callers to input a personal identification number (PIN) before placing a call, just as many PBX's in other institutions require authorization codes. PIN numbers can be used with inmate calling systems, as opposed to public payphones, since inmate calling systems are available only to a limited number of private users.

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<sup>3</sup> Bell Atlantic argues that the advanced functionality of inmate calling systems does not require a finding that these systems are CPE because the functionality strictly addresses "fraud and abuse problems" in the inmate market. Inmate calling systems certainly are designed to address problems of fraud and abuse. But these systems also usually include functionality for other general purposes, such as station restriction on hours of operation, type of call (e.g., toll, local, collect, etc.), call accounting, PIN and authorization codes, etc. Moreover, the fact that inmate calling systems are designed to address fraud and abuse is not a valid reason to extend the Tonka exclusion to include these private systems. Indeed, there is no question that the equipment for the advanced functionality of inmate calling systems (i.e., the computer software and processing equipment), if separated from the underlying calling service, is CPE. The Commission's decision in IBM, 58 RR2d 374 (1984), makes clear that an exception to the CPE rules cannot be gained by combining excepted services (i.e., payphones) with functionality that is outside of that exception. Therefore, Bell Atlantic's argument must fail.

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Further, even if the inmate calling systems at issue here were payphones, which they are not, Tonka only extends to LEC payphones that are "available to the transient, mobile public."<sup>4</sup> ICSPTF has already explained that inmate calling systems are not, by any stretch of the imagination, available to the transient, mobile public. The whole purpose of confinement facilities is to confine inmates -- i.e. to make sure they are neither transient nor mobile. Thus, inmate calling systems are clearly not within the confines of Tonka.

Second, Bell Atlantic's claim that the grant of ICSPTF's Petition would place BOC inmate calling systems at a competitive disadvantage with independent providers is wrong and, in any event, not a valid reason to deny ICSPTF's Petition. To the extent that the MFJ prohibitions create a competitive disadvantage, the BOCs are subject to the MFJ's prohibition against interexchange services now, regardless of whether or not inmate calling systems are declared as CPE.<sup>5</sup> What is more revealing, however, is that by arguing the need to keep inmate calling systems in the rate base, Bell Atlantic implicitly admits that inmate calling systems are cross-subsidized from general revenues. Yet, eliminating the ability of LECs to cross-subsidize services that are otherwise competitive, and preventing competitive distortions that such cross-subsidies and bundling cause, is the fundamental policy goal of Computer II. The implication of Bell Atlantic's argument, therefore, is the exact reason why ICSPTF's Petition should be granted, not denied. Conversely, if the Commission denies ICSPTF's Petition, it will in effect be ruling that the policy goals of

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<sup>4</sup> Tonka, supra, at 910.

<sup>5</sup> In fact, the MFJ's interexchange prohibition does not place BOCs at a competitive disadvantage. Confinement facility administrators are allowed to contract separately with interexchange carriers for the carriage of all interLATA traffic in conjunction with a BOC's inmate calling systems. The confinement facility administrator can obtain revenue for both interLATA and intraLATA calls whether he or she contracts with an independent inmate calling services provider or the BOC. The only difference is that in the latter case, there are two sources of revenue: the BOC for local intraLATA toll and the IXC or operator services provider with whom the facilities administrator contracts for interLATA traffic. If the administrator contracts with an independent inmate calling services provider, the revenue comes from one source. But in either case, there is revenue for both interLATA and intraLATA toll. From the viewpoint of the confinement facility administrators, therefore, BOC systems are clearly competitive with independent providers.

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Computer II are no longer valid. Such a ruling would be wholly inconsistent with the bedrock principles of telecommunications policy that have served this country for two decades and beyond.

Finally, Bell Atlantic's threat that it will abandon the inmate market if it no longer is allowed to subsidize the service rings hollow. The Commission heard similar arguments from the LECs in adopting the CPE policies of Computer II. However, competition in the CPE market is currently thriving and the LECs have been active participants in this field, despite the fact that cross-subsidies are not allowed. ICSPTF has illustrated that the inmate calling services market is robustly competitive. Competition in this market will only continue to grow with the grant of ICSPTF's Petition, just like other CPE markets have done after unbundling and removal from regulated accounts. Contrary to Bell Atlantic's claim, therefore, ICSPTF believes that the LECs will gear up and compete more vigorously with independent providers of inmate calling systems after ICSPTF's Petition has been granted, only this time the competition will be on more equitable terms.

In any event, if a LEC believes there is a legitimate public policy purpose for cross-subsidizing an inmate calling system, the appropriate procedure is for that LEC to request a waiver of the Commission's CPE rules, not to completely ignore the Commission's CPE policies as the LECs currently do. It is both inappropriate and disingenuous for LECs to continue their wholesale disregard of the policies of Computer II as they pertain to inmate calling systems. The only proper action, therefore, is to grant ICSPTF's Petition and, if circumstances warrant, subsequently entertain waiver requests of those LECs that can legitimately justify a CPE exclusion.

Sincerely,



Albert H. Kramer

David B. Jeppsen

Counsel for the Inmate Services  
Providers Task Force

cc: James R. Keegan  
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